IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6738 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATKUMAR L ACHARYA (MEDICAL OFFICER)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6738 of 2002

MR NV GANDHI for Petitioner No. 1

MR RV DESAI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/09/2002

ORAL JUDGEMENT

Rule. Mr RV Desai, learned AGP waives service of Rule for the respondents.

2. In this petition under Article 226 of the

Constitution, the petitioner has challenged the action of the respondent authorities in not including the petitioner's name in the select list of Medical Officers Class-II deputed for DPH training course at Kolkatta.

3. The petitioner has produced the circular dated 3.11.2001 (Annexure "A") by which the Commissioner of Health & Medical Services and Medical Education had called upon all the Deputy Directors and the District Health Officers of District Panchayats in the State to forward the applications of Medical Officers Class-II who were willing to be deputed for the aforesaid training. The applications were required to reach the office of the Regional Deputy Director before 31.12.2001. The petitioner accordingly submitted his application dated 1.12.2001 through his superior i.e. District Health Officer, Amreli District Panchayat. A copy of the said application is produced at Annexure "B" to the petition. The District Health Officer, Amreli District Panchayat forwarded and recommended the petitioner's application and the application reached the office of the Deputy Director, Bhavnagar Section on 20.12.2001. It is, therefore, submitted that the petitioner was entitled to have his name included in the select list of Medical Officers Class-II for being deputed for the aforesaid training at Kolakatta.

4. In response to the notice issued by this Court, affidavit in reply has been filed on behalf of the respondents wherein it is stated that the applications were to reach the Commissionerate by 15.12.2001, but the petitioner's application was received by the Deputy Director on 20.12.2001 and, therefore, the petitioner's name was not included in the list of Medical Officers Class-II for the aforesaid training. It is made clear in the reply affidavit that the only reason for non-inclusion of the petitioner's name in the aforesaid list was the delay in receiving the petitioner's application, but there was nothing else against the petitioner.

5. The learned counsel for the petitioner states that the training was to commence from August, 2002, but according to the petitioner's information, some other Medical Officers selected for the said training course have not yet left Gujarat and, therefore, or even otherwise the petitioner will be in a position to join the training course so as to complete the same satisfactorily.

6. Having heard the learned counsel for the parties

and having perused the aforesaid pleadings, it appears to the Court that the petitioner has made out a strong case. The very fact that the circular dated 3.11.2001 issued by the Commissioner of Health and Medical Services specifically stated that the applications were to reach the Regional Deputy Director by 31.12.2001 and the petitioners application had reached him by 20.12.2001 and there being no other ground for not including the petitioner's name in the list of Medical Officers deputed for training, the omission on the part of the respondents in not including the petitioner's name for the aforesaid training has to be held as illegal and arbitrary.

7. For the aforesaid reasons, the petition succeeds. The respondents are directed to include the petitioner's name for the DPH training course for the year 2002-2004 at Kolakatta within one week from the date of the receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

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